BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules

CS DOCKET NO. 95-178

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To: The Commission

COMMENTS

United Communications Corporation, by its counsel, submits these comments in response to the Notice of Proposed Rule Making ("the Notice") released December 8, 1995 by the Federal Communications Commission (the "Commission" or "FCC") in CS Docket No. 95-178. In the Notice, the Commission seeks comment on its proposal to revise the definition of markets for purposes of cable television broadcast signal carriage rules.

United Communications Corp. is the licensee of television broadcast stations KEYC-TV, Channel 12, Mankato, Minnesota, and WWNY-TV, Channel 7, Watertown, New York.

The Commission's current rule for defining television broadcast stations' local markets for purposes of cable carriage rules is set forth at Section 76.55(e) of the Commission's rules.[1] This rule was adopted pursuant to Section 614 of the Communications Act, as added by the Cable Television Consumer Protection and Competition Act of 1992. As cited in the Notice, this section provides that a local commercial broadcast television station's market

[1] 47 C.F.R. § 76.55(e).

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shall be defined "as determined by Arbitron and published in its Television ADI Market Guide *or any successor publication* . . .." (Emphasis added)

Arbitron's decision to discontinue publication of its Television ADI Market Guide, rather than giving occasion for a substantial revision of the rule, should first raise the question of whether there is a successor publication to Arbitron's Television ADI Market Guide. Although it appears that no other organization will succeed Arbitron in designating local television markets under the terminology of "Areas of Dominant Influence" (ADIs), both a widely recognized functional equivalent to ADIs and a "successor publication" already do exist in Nielsen's Designated Market Areas (DMAs) and its *DMA Market and Demographic Rank Report*.

The utility in using DMAs for defining television markets is implicitly recognized in the Commission's existing market definition rule, which uses Nielsen's DMAs for the definition of television markets in certain parts of the country ("outside the contiguous 48 states"). Section 76.55(e)(1). In fact, the Notice's proposed new rule would continue this same role for DMAs, although using the 1991-92 edition rather than the current one. *Notice* at Appendix.

Effectively, no revision of the market definition is needed other than to begin using the DMA as the market measure. The rules are enforceable as they stand: Commercial television stations' October 1, 1996 election between retransmission consent and must-carry status,[2] can be made based on Nielsen's DMAs, "except" where the Commission has "with

[2] Pursuant to Section 76.64 of the Commission's rules.

respect to a particular television broadcast station, include[d] additional communities within its television market or exclude[d] communities from such station's market to better effectuate the purposes of this section." Communications Act § 614(h)(1)(C)(i), implemented by 47 C.F.R. § 76.59.

Perhaps a formal recognition of the succession from ADIs to DMAs should be noted with a change in the wording of the rule, as set out in the first option discussed in the Notice. But to simply change "ADI" to "DMA" is a much less sweeping change than that proposed in the Notice. Moreover, it is more faithful to the current law in that it preserves the periodic update of the market definitions. This contrasts with the proposed rule which would cause the market definitions to stagnate.

The Notice suggests that abandoning the currently scheduled review every three years of market definitions "has the advantage of providing stability in the television broadcast signal carriage process." However, "stability" is not the primary goal of the 1992 Cable Act or of communications regulation in general. Any stability gained would be at the expense of having signal carriage requirements that reflect new developments and changing conditions. A static set of market boundaries for purposes of the must carry rules would act as a disincentive to the provision of improved service through new stations and better facilities for existing stations. The negative effect of such a rule would be especially pronounced in the case of new stations in rural areas, which would not be able to establish their own markets in the eyes of the Commission.

Furthermore, the Notice does not propose to provide stability by repealing the procedure provided for by Section 76.59 of the Rules, whereby a party may petition for market modification, thus any future adaptation to changing reality of the currently locked-in market definitions would require the time-consuming Section 76.59 petition process, rather than an automatic update as the current rule provides.[3]

The Notice questions whether changing from ADIs to DMAs "involves any systematic improvement in market definitions." Notice at 4. Changing from ADIs to DMAs is primarily advisable in order to provide for automatic evolution of market definitions, not because it would represent a systematic improvement per se. However, we can offer an example of a situation in which it would improve a market definition and obviate the need for a separate Section 76.59 proceeding.

The 1991-92 ADI for Mankato, Minnesota covers only the counties of Blue Earth and Faribault, Minnesota and Emmet, Iowa. The current DMA for the same market adds the counties of Brown, Watonwan, and Martin and the southern part of Nicollet county, Minnesota. These are communities in which KEYC-TV, the only Mankato broadcast television station, is the most significantly viewed station.

These counties, by all rights, should be in the Mankato market in any event. The transmitter of KEYC-TV is located in Watonwan County, and it is the only television station that has a transmitter anywhere within fifty miles of Watonwan County. KEYC-TV is the only truly local station in this area. A rule change that has the effect of recognizing that fact can only be salutary. In addition, the necessity, time and expense of a special petition

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[3] In noting that the market definition process is somewhat "circular," Notice at 4, note 9, there is an erroneous conclusion that "over time this process could tend to expand the size of the larger markets." Circularity would reinforce that status quo, rather than favoring growth of the largest markets.

to modify the Mankato station's ADI to include these counties would be obviated by changing from ADIs to DMAs.

In conclusion, United Communications Corporation urges the Commission to follow the first alternative set forth in the Notice, i.e., that Nielsen DMAs be substituted for Arbitron ADIs in the definition of a local commercial broadcast television station's market for purposes of mandatory cable television broadcast signal carriage rules. This is the simplest and most direct approach to provide accurate and current market definitions for the cable rules.

Respectfully submitted,

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Dated: January 19, 1996